THE CABLE COMMUNICATIONS ACT OF 1984
PUBLIC LAW 98-549 - October 30, 1984

98 STAT.2780

Amendment of Communications Act of 1934

SEC. 2. The Communications Act of 1934 is amended by inserting after title V the following new title:

"TITLE VI - General Provisions

"PURPOSES

47.USC 521

"SEC.601. The purposes of this title are to -

"(1) establish a national policy concerning cable communications;

"(2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;

"(3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;

"4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;

"(5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this title; and

"(6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden

on cable systems.

'DEFINITIONS

47.USC 522

"SEC.602. For purposes of this title -

"(1) The term 'affiliate', when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;

"(2) the term 'basic cable service' means any service tier which includes the transmission of local television broadcast signals;

"(3) the term 'cable channel' or 'channel' means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);

"(4) the term 'cable operator' means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

"(5) the term 'cable service' means -

"(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming services, and

"(B) subscriber interaction, if any, which is required for the selection of such video programming or other programming service;

"(6) the term 'cable system' means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such terms does not include (A)

a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (C) a facility or common carrier which is subject, in whole or in part, to the provisions of title II of this Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems;

"(7) the term 'Federal Agency' means any agency of the United States, including the Commission;

"(8) the term 'franchise' means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 626), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

"(9) the term 'franchising authority' means any governmental entity empowered by Federal, State, or local law to grant a franchise;

"(10) the term 'grade B contour' means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

"(11) the term 'other programming service' means information that a cable operator makes available to all subscribers generally;

"(12) the term 'person' means an individual, partnership, association, joint stock company, corporation, or governmental entity;

"(13) the term 'public, educational, or governmental access facilities' means -

(A) channel capacity designed for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

"(14) the term 'service tier' means a category of cable or other

services provided by a cable operator and for which a separate rate is charged by the cable operator;
"(15) the term 'State' means any State, or political subdivision or agency thereof; and
"(16) the term 'video programming' means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

"Part II - Use of Cable Channels and Cable Ownership Restrictions

CABLE CHANNELS FOR PUBLIC, EDUCATIONAL, OR GOVERNMENTAL USE"

47.USC 531

"SEC.611.(a) A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.
"(b) A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 626, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.
"(c) A franchise authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity; whether or not required by the franchising authority pursuant to subsection (b).

"(d) In the case of any franchise under which channel capacity is designated under subsection (b), the franchising authority shall prescribe -

"(1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provisions of other services if such channel capacity is not being used for the purposes designated, and

"(2) rules and procedures under which such permitted use shall cease.

"(e) Subject to section 624(d), a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section.

"(f) For purposes of this section, the term 'institutional network' means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

"CABLE CHANNELS FOR COMMERCIAL USE"
47.USC 532

"SEC.612. (a) The purpose of this section is to assure that the widest possible diversity information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.

(b)(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

"(A) An operator of any cable system with 36 or more (but not more than 54) activated channels shall designate 10 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

"(B) An operator of any cable system with 55 or more (but not more than 100) activated channels shall designate 15 percent of such channels which are not otherwise required for use (or for the use of

which is not prohibited) by Federal law or regulation.
"(C) An operator of any cable system with more than 100 activated channels shall designate 15 percent of all such channels.
"(D) An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator, unless the cable system is required to provide such channel capacity under the terms of a franchise in effect on the date of the enactment of this title.
"(E) An operator of any cable system in operation on the date of the enactment of this title shall not be required to remove any service actually being provided on July 1, 1984, in order to comply with this section, but shall make channel capacity available for commercial use as such capacity becomes available until such time as the cable operator is in full compliance with this section.
"(2) Any Federal agency, State, or franchising authority may not require any cable system to designate channel capacity for commercial use by unaffiliated persons in excess of the capacity specified in paragraph (1), except as otherwise provided in this section.
"(3) A cable operator may not be required, as part of a request for proposals or as a part of a proposal for renewal, subject to section 626, to designate channel capacity for any other use (other than commercial use by unaffiliated persons under this section) except as provided in sections 611 and 637, but a cable operator may offer in a franchise, or proposal for renewal thereof, to provide, consistent with applicable law, such capacity for other than commercial use by such persons.
"(4) A cable operator may use any unused channel capacity designated pursuant to this section until the use of such channel capacity of obtained, pursuant to a written agreement, by a person unaffiliated with the operator.
"(5) For purposes of this section -
"(A) the term 'activated channels' means those channels engineered at the headend of the cable system for the provision of

services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use, and

"(B) the term 'commercial use' means the provision of video programming, whether or not for profit.

"(6) Any channel capacity which has been designated for public, educational, or governmental use may not be considered as designated under this section for commercial use for purpose of this section.

(c)(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) for commercial use, the cable operator shall establish, consistent with the purpose of this section, the price, terms, and conditions of such use which Are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

"(2) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that an operator may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

"(3) Any cable system channel designated in accordance with this section shall not be used to provide a cable service that is being provided over such system on the date of the enactment of this title, if the provision of such programming is intended to avoid the purpose of this section.

(d) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available for use pursuant to this section may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available. If the court finds that the channel

capacity sought by such person has not been made available in accordance with this section, or finds that the price, terms, or conditions established by the cable operator are unreasonable, the court may order such system to make available to such person, the channel capacity sought, and further determine the appropriate price, terms, or conditions for such use consistent with subsection(c), and may award actual damages if it deems such relief appropriate. In any such action, the court shall not consider any price, term, or condition established between an operator and an affiliate for comparable services.

"(e)(1) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available pursuant to this section may petition the Commission for relief under this subsection upon a showing of prior adjudicated violations of this section. Records of previous adjudications resulting in a court determination that the operators had violated this section, or that the price terms, or conditions established by such system are unreasonable under subsection(c), the Commission shall, by rule or order, require such operator to make available such channel capacity under price, terms, and conditions consistent with subsection (c).

"(2) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by an operator, the Commission may also establish any further rule or order necessary to assure that the operator provides the diversity of information sources required by this section.

"(3) In any case in which the Commission finds that the prior adjudication violations of this section constitute a pattern or practice of violations by any person who is an operator of more than one cable system, the Commission may also establish any further rule or order necessary to assure that such person provides the diversity of information sources required by this section.

"(f) In any action brought under this section in any Federal district court or before the Commission, there shall be a presumption that the price, terms, and conditions for use of channel capacity designated

pursuant to subsection (b) are reasonable and in good faith unless shown by clear and convincing evident to the contrary.
"(g) Notwithstanding sections 621(c) and 623(a), at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources. Any rules promulgated by the Commission pursuant to this subsection shall not preempt authority expressly granted to franchising authorities under this title.
"(h) Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgement of the franchising authority is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the Untied States.

"FRANCHISE FEES

47.USC 542

"SEC.622. (a) Subject to the limitation of subsection (b), any cable operator may be required under the terms of any franchise to pay a franchise fee.
"(b) For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5% of such cable operator's gross revenues derived in such period from the operation of the cable system. For purposes of this section, the 12 month period shall be the 12 month period applicable under the franchise for accounting purposes. Nothing in this subsection shall prohibit a franchising authority and a cable operator from agreeing that franchise fees which lawfully could be collected for any such 12 month period shall be paid on a prepaid or deferred basis; except that the sum of the fees paid during the term of the franchise may not

exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum.
"(c) A cable operator may pass through to subscribers the amount of any increase in franchise fee, unless the franchising authority demonstrates that the rate structure specified in the franchise reflects all costs of franchise fees and so notifies the cable operator in writing.
"(d) In any court action under subsection (c), the franchising authority shall demonstrate that the rate structure reflects all costs of the franchise fees.
"(e) Any cable operator shall pass through to subscribers the amount of any decrease in a franchise fee.
"(f) A cable operator may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill.
"(g) For purposes of this section -
"(1) the term 'franchise fee' includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such.
"(2) the term 'franchise fee' does not include -

"(A) any tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers;

"(B) in the case of any franchise in effect on the date of the enactment of this title, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, education, or governmental access facilities;

"(C) in the case of any franchise granted after such date of enactment, capital costs which are required by the franchise to be incurred by the cable operator for public, education, or governmental access facilities;

"(D) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or

liquidated damages; or

"(E) any fee imposed under title 17, U.S. Code.

"(h)(1) Nothing in this Act shall be construed to limit any authority of a franchising authority to impose a tax, fee, or other assessment of any kind on a person (other than a cable operator) with respect for cable service or other communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator.

"(2) For any 12 month period, the fees paid by such person with respect to any such cable service or other communications service shall not exceed 5% of such person's gross revenues derived in such period from the provision of such service over the cable system.

"(i) Any Federal agency may not regulate the amount of the franchise fees paid by a cable operator or regulate the use of funds derived from such fees, except as provided in this section.

"REGULATION OF RATES

47.USC 543

"SEC.623.(a) Any Federal agency or State may not regulate the rates for the provision of cable service except to the extent provided under this section. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers but only to the extent provided under this section. (See (b) - (h)).

"REGULATION OF SERVICES, FACILITIES, AND EQUIPMENT

47.USC 544

"SEC.624. (a) Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this title.

"(b) In the case of any franchise granted after the effective date of this title, the franchising authority, to the extent related to the establishment or operation of a cable system -
"(1) in its request for proposals for a franchise (including requests for renewal proposals, subject to section 626), may establish requirements for facilities and equipment, but may not establish requirements for video programming or other information services; and
"(2) subject to section 625, may enforce any requirements contained within the franchise -
"(A) for facilities and equipment; and
"(B) for broad categories of video programming or other services.
"(c) In the case of any franchise in effect on the effective date of this title, the franchising authority may, subject to section 625, enforce requirements contained within the franchise for the provision of services, facilities, and equipment, whether or not related to the establishment or operation of a cable system.
"(d)(1) Nothing in this title shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the U. S..
"(2)(A) In order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.
"(B) Subparagraph (A) shall take effect 180 days after the effective date of this title.
"(e) The Commission may establish technical standards relating to the facilities and equipment of cable systems which a franchising authority may require in the franchise.

"(f)(1) Any Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in this title.
"(2) Paragraph (1) shall not apply to -
"(A) any rule, regulation, or order issued under any Federal law, as such rule, regulation, or order (i) was in effect on September 21, 1983, or (ii) may be amended after such date if the rule, regulation, or order as amended is not inconsistent with the express provisions of this title; and
"(B) any rule regulation, or order under title 17, U.S. Code.

"COORDINATION OF FEDERAL, STATE, AND LOCAL AUTHORITY

47.USC 555

"SEC.636...
"(c) Except as provided in section 637, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with the Act shall be deemed to be preempted and superseded...

"EXISTING FRANCHISES

47.USC 556

"SEC.637. (a) The provisions of -
"(1) any franchising in effect on the effective date of this title, including any such provisions which relate to the designation, use, or support for the use of channel capacity for public, educational, or governmental use, and

"(2) any law of any State (as defined in Section 3(v)) in effect on the date of enactment of this section, or any regulation promulgated pursuant to such law, which relates to such designation, use or support of such channel capacity; shall remain in effect, subject to the express provisions of this title, and for not longer than the then current remaining term of the franchise as such franchise existed on such effective date.

"CRIMINAL AND CIVIL LIABILITY

47.USC 558

"SEC.638. Nothing in this title shall be deemed to affect the criminal or civil liability of cable programmers or cable operators pursuant to the Federal, State, or local law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising or other similar laws, except that cable operators shall not incur any such liability for any program carried on any channel designated for public, educational, governmental use, or on any other channel obtained under section 612 or under similar arrangements.

"OBSCENE PROGRAMMING

47.USC 559

"SEC.639. Whoever transmits over any cable system any matter which is obscene or otherwise unprotected by the Constitution of the U.S. shall be fined not more than $10,000 or imprisoned not more than 2 years, or both.

C

Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 47. Telegraphs, Telephones, and Radiotelegraphs
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter V-A. Cable Communications
Part I. General Provisions (Refs & Annos)
→ § 521. Purposes

The purposes of this subchapter are to--

(1) establish a national policy concerning cable communications;

(2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;

(3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;

(4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;

(5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this subchapter; and

(6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

CREDIT(S)

(June 19, 1934, c. 652, Title VI, § 601, as added Oct. 30, 1984, Pub.L. 98-549, § 2, 98 Stat. 2780.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1984 Acts. House Report No. 98-934 and Statements by Legislative Leaders, see 1984 U.S. Code Cong. and Adm.News, p. 4655.

Effective and Applicability Provisions

1984 Acts. Section 9(a) of Pub.L. 98-549 provided that: "Except where otherwise expressly provided, the provisions

of this Act [enacting this subchapter and section 611 of this title, amending sections 152, 224, 309 and 605 of this title, section 2511 of Title 18, Crimes and Criminal Procedure and section 1805 of Title 50, War and National Defense, and enacting provisions set out as notes under this section and sections 543, 605 and 609 of this title] and the amendments made thereby shall take effect 60 days after the date of enactment of this Act [Oct. 30, 1984]."

Change of Name

Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Energy and Commerce of the House of Representatives treated as referring to the Committee on Commerce of the House of Representatives, except that any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Energy and Commerce of the House of Representatives treated as referring to the Committee on Agriculture of the House of Representatives, in the case of a provision of law relating to inspection of seafood or seafood products, the Committee on Banking and Financial Services of the House of Representatives, in the case of a provision of law relating to bank capital markets activities generally or to depository institution securities activities generally, and the Committee on Transportation and Infrastructure of the House of Representatives, in the case of a provision of law relating to railroads, railway labor, or railroad retirement and unemployment (except revenue measures related thereto), see section 1(a)(4) and (c)(1) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Short Title

1984 Amendments. For short title of Pub.L. 98-549 [enacting this subchapter] as the "Cable Communications Policy Act of 1984", see section 1(a) of Pub.L. 98-549, set out as a Short Title of 1984 Amendment note under section 609 of this title.

Applicability of Antitrust Laws to Cable Television Consumer Protection and Competition Act of 1992

Pub.L. 102-385, §§ 27, 28, Oct. 5, 1992, 106 Stat. 1503, eff. 60 days after Oct. 5, 1992, provided that: "Nothing in this Act or the amendments made by this Act [Pub.L. 102-385, Oct. 5, 1992, 106 Stat. 1460, for classifications to which see Short Title of 1992 Amendments note under section 609 of this title and Tables] shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law."

Effect of Cable Communications Policy Act of 1984 on Jurisdiction of Federal Communications Commission Respecting Wire or Radio Communications Through Cable Systems

Section 3(b) of Pub.L. 98-549 provided that: "The provisions of this Act [enacting this subchapter and section 611 of this title, amending sections 152, 224, 309 and 605 of this title, section 2511 of Title 18, Crimes and Criminal Procedure and section 1805 of Title 50, War and National Defense, and enacting provisions set out as notes under this section and sections 543, 605 and 609 of this title] and amendments made by this Act shall not be construed to affect any jurisdiction the Federal Communications Commission may have under the Communications Act of 1934 [this chapter] with respect to any communication by wire or radio (other than cable service, as defined in section 602(5) of such Act [section 522(5) of this title]) which is provided through a cable system, or persons or facilities engaged in such communications."

Congressional Findings and Policy: Cable Television Consumer Protection and Competition Act of 1992

Pub.L. 102-385, §§ 2(a), (b), 28, Oct. 5, 1992, 106 Stat. 1460, eff. 60 days after Oct. 5, 1992, provided that:

"(a) **Findings.**--The Congress finds and declares the following:

"(1) Pursuant to the Cable Communications Policy Act of 1984 [this subchapter], rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost 3 times as much as the Consumer Price Index since rate deregulation.

"(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

"(3) There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56,000,000 households, over 60 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

"(4) The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

"(5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies.

"(6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

"(7) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934 [section 396(a)(5) of this title]. The distribution of unique noncommercial, educational programming services advances that interest.

"(8) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because--

"(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

"(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of $10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

"(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than $3,000,000,000 in public broadcasting since 1969; and

"(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public

television services, will be deprived of those services.

"(9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of the Communications Act of 1934 [section 307(b) of this title] of providing a fair, efficient, and equitable distribution of broadcast services.

"(10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

"(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

"(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

"(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

"(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

"(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

"(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

"(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 [this subchapter] was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

"(18) Cable television systems often are the single most efficient distribution system for television programming. A Government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the 'A/B' input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

"(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the 2 industries.

"(20) The Cable Communications Policy Act of 1984 [this subchapter], in its amendments to the Communications Act of 1934 [this chapter], limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

"(21) Cable systems should be encouraged to carry low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming.

"(b) **Statement of policy.**--It is the policy of the Congress in this Act [Pub. L. 102-385, Oct. 5, 1992, 106 Stat. 1460, for classifications to which see Short Title of 1992 Amendments note under section 609 of this title] to--

"(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

"(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

"(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

"(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

"(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers."

Study and Report on Sports Programming Migration

Pub.L. 102-385, §§ 26, 28, Oct. 5, 1992, 106 Stat. 1502, 1503, eff. 60 days after Oct. 5, 1992, provided that:

"(a) **Study required.**--The Federal Communications Commission shall conduct an ongoing study on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends in the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends.

"(b) **Report on study.**--The Federal Communications Commission shall, on or before July 1, 1993, and July 1, 1994, submit an interim and a final report, respectively, on the results of the study required by subsection (a) to the

Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends required by subsection (a) and such legislative or regulatory recommendations as the Commission considers appropriate.

"(c) Analysis of preclusive contracts required.--

"(1) Analysis required.--In conducting the study required by subsection (a), the Commission shall analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations. In conducting such analysis, the Commission shall consult with the Attorney General to determine whether and to what extent such preclusive contracts are prohibited by existing statutes. The reports required by subsection (b) shall include separate statements of the results of the analysis required by this subsection, together with such recommendations for legislation as the Commission considers necessary and appropriate.

"(2) Definition.--For purposes of the subsection, the term 'preclusive contract' includes any contract that prohibits--

"(A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or

"(B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station."

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193 ALR. Fed. 291, Appropriateness of Federal Court Abstention Under Colorado River Water Conservation District v. United States, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483, Given the Existence of Concurrent Parallel....

147 ALR. Fed. 613, Construction and Application of 28 U.S.C.A. § 2403 (And Similar Predecessor Provisions), Concerning Intervention by United States or by State in Certain Federal Court Cases Involving Constitutionality Of....

113 ALR. Fed. 523, Validity and Construction of Provision of Cable Communications Policy Act (47 U.S.C.A. § 541(A)(2)) Allowing Cable Companies Access to Utility Easements on Private Property.

23 ALR 6th 165, Cable Television Equipment or Services as Subject to Sales or Use Tax.

46 ALR 4th 811, State Civil Actions by Subscription Television Business for Use, or Providing Technical Means of Use, of Transmissions by Nonsubscribers.

8 ALR 2nd 6, Change in Party After Statute of Limitations Has Run.

174 ALR 549, Interest Necessary to Maintenance of Declaratory Determination of Validity of Statute or Ordinance.

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NOTES OF DECISIONS

1. Purpose

Purpose of Cable Act was establishment of national policy for regulation of cable systems, and Act was also designed to establish guidelines for exercise of federal, state, and local authority with respect to regulation of cable systems. Matter of Department of Defense Cable Television Franchise Agreements, Fed.Cl.1996, 36 Fed.Cl. 171. Telecommunications 1204

2. State regulation or control

Connecticut mandatory cable access law, which provided franchised cable television operators with access to apartment complexes, was not preempted by either federal Cable Act or Federal Communications Commission (FCC) precedent; Congress was aware of existence of state cable access provisions and chose not to expressly preempt or otherwise limit scope of those provisions in Act. AMSAT Cable Ltd. v. Cablevision of Connecticut Ltd. Partnership, C.A.2 (Conn.) 1993, 6 F.3d 867. States 18.81; Telecommunications 1208

To extent that New York and federal statutes regulating cable television service providers differ, federal statutes control. Morrone v. CSC Holdings Corp., E.D.N.Y.2005, 363 F.Supp.2d 552. States 18.81; Telecommunications 1208

Cable operators could amend complaint to add individual members of Vermont's Public Service Board as defendants in their official capacity, in action to enjoin enforcement, under the Cable Communications Policy Act, of Board's order renewing operators' franchises subject to various conditions and limitations; amendment would not prejudice Board, nor would it be futile, in that, *Ex Parte Young* exception to Eleventh Amendment immunity would allow suit against individual members. Mountain Cable Co. v. Public Service Bd. of State of Vt., D.Vt.2003, 242 F.Supp.2d 400. Federal Civil Procedure 392

Dormant commerce clause did not preempt local regulation of cable television; court could not employ commerce clause to second-guess Congressional determination under Cable Communications Policy Act as to which aspects of cable television were amenable to local control and which were not. Storer Cable Communications v. City of Montgomery, Ala., M.D.Ala.1992, 806 F.Supp. 1518. Commerce 59; Telecommunications 1208

Cable Communications Policy Act of 1984, which established a comprehensive regulatory scheme for the cable industry, preempted Utah Cable Television Programming Decency Act, which gave certain state officials authority to bring nuisance actions against anyone who continuously and knowingly distributed indecent material within the state over any cable television system or pay-for-viewing television programming. Community Television of Utah, Inc. v. Wilkinson, D.C.Utah 1985, 611 F.Supp. 1099, affirmed 800 F.2d 989, affirmed 107 S.Ct. 1559, 480 U.S. 926, 94 L.Ed.2d 753. States 18.81

Neither Cable Communications Policy Act nor FCC decisions preempted town from enforcing time-limited, mutually agreed upon rate freeze provision in cable television license. Town of Norwood v. Adams-Russell Co., Inc., Mass.1988, 519 N.E.2d 253, 401 Mass. 677. States 18.81; Telecommunications 1208

Gross receipts tax statute that is not unduly discriminatory in imposing tax on cable television operator does not conflict with and is not preempted by Federal Cable Communications Policy Act. Medlock v. Leathers, Ark.1992, 842 S.W.2d 428, 311 Ark. 175, certiorari denied 113 S.Ct. 2929, 508 U.S. 960, 124 L.Ed.2d 680. States 18.75; Taxation 3626

Cable Act, which specifically provided that cable systems were not common carriers or public utilities, did not prohibit municipal ownership of cable systems or franchises or require franchises to be exclusive, and, thus, Cable Act did not preempt state court's ruling on city commission's authority to operate cable television system. Paragould Cablevision Inc. v. City of Paragould, Ark.1991, 809 S.W.2d 688, 305 Ark. 476. States 18.81; Telecommunications 1208

3. Jurisdiction

State-law claim that municipal franchise fees imposed on cable operators were illegal tax under Iowa law to extent they exceeded costs of regulation did not "arise under" Federal Cable Communications Policy Act, so as to render removal under federal question jurisdiction proper, although provisions of the Federal Cable Communications Policy Act were asserted by cities as defenses to state law violations alleged; federal law did not completely occupy field, federal questions, while relevant, were not disputed and substantial, and federal court decision on matters of state law would cause some disruption in balance of federal and state judicial responsibilities. Lindstrom v. City of Des Moines, IA, S.D.Iowa 2007, 470 F.Supp.2d 1002. Removal Of Cases 25(1)

Iowa case law requiring that franchise fees correspond to the costs of regulating the franchised activity did not impede purposes of Federal Cable Communications Policy Act so as to preempt state-law claims that franchise fees were illegal taxes; purposes of Act would not be impeded by states charging less than higher maximum franchise fee of five percent of gross revenues permitted by federal law. Lindstrom v. City of Des Moines, IA, S.D.Iowa 2007, 470 F.Supp.2d 1002. States 18.81; Telecommunications 1208

Two predominant objectives of Cable Communications Policy Act are: to make local franchising process primary means of cable television regulation, and to insure that public receives widest possible diversity of information services and sources, in a manner which is responsive to means and interests of local communities. Rollins Cablevue, Inc. v. Saienni Enterprises, D.Del.1986, 633 F.Supp. 1315. Telecommunications 1214

Court of Federal Claims had jurisdiction to provide Congress with advisory opinion as to whether it was within

power of executive branch to treat cable television franchise agreements for construction, installation, or capital improvement of cable television systems at military installations of Department of Defense as contracts under part 49 of Federal Acquisition Regulation without violating Communications Act of 1934, and if so, whether executive branch was required by law to so treat such franchise agreements. Matter of Department of Defense Cable Television Franchise Agreements, Fed.Cl.1996, 35 Fed.Cl. 114. Federal Courts ⚿1088.1

District court lacked subject matter jurisdiction over cable company's action, seeking declaration that Cable Communications Policy Act of 1984 preempted municipal regulation of cable television rates; preemption argument operated only as possible defense in city's suit in courts of Commonwealth seeking injunctive and other relief from rate increase. Cablevision of Boston Ltd. Partnership v. Flynn, D.Mass.1989, 710 F.Supp. 23, affirmed 889 F.2d 377. Declaratory Judgment ⚿276

4. Standing

Cable operators fell within zone of interests protected by Cable Communications Policy Act, and thus had prudential standing to bring action challenging state public utility commission's determination that telephone company's proposed video programming service was not subject to regulation as "cable service" under Cable Act, despite company's contention that Cable Act was intended to safeguard cable service consumers, where Cable Act was also intended to promote competition. Office of Consumer Counsel v. Southern New England telephone Co., D.Conn.2007, 502 F.Supp.2d 277. Telecommunications ⚿1243

5. Ripeness

Cable operators' claim that state public utility commission improperly determined that telephone company's proposed video programming service was not subject to regulation as "cable service" under Cable Communications Policy Act was ripe for adjudication, even though company had not yet offered its video service in state or revealed specific features of its service, and company had option of voluntarily complying with Cable Act, where nature of harm alleged to have been suffered by operators was unequal playing field. Office of Consumer Counsel v. Southern New England telephone Co., D.Conn.2007, 502 F.Supp.2d 277. Telecommunications ⚿1243

47 U.S.C.A. § 521, 47 USCA § 521

Current through P.L. 111-10 (excluding P.L. 111-5 and 111-8) approved 3-20-09

END OF DOCUMENT

C

Effective: February 8, 1996

United States Code Annotated Currentness
Title 47. Telegraphs, Telephones, and Radiotelegraphs
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter V-A. Cable Communications
Part I. General Provisions (Refs & Annos)
→ **§ 522. Definitions**

For purposes of this subchapter--

(1) the term "activated channels" means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;

(2) the term "affiliate", when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;

(3) the term "basic cable service" means any service tier which includes the retransmission of local television broadcast signals;

(4) the term "cable channel" or "channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);

(5) the term "cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(6) the term "cable service" means--

(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

(7) the term "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the

transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system;

(8) the term "Federal agency" means any agency of the United States, including the Commission;

(9) the term "franchise" means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 546 of this title), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

(10) the term "franchising authority" means any governmental entity empowered by Federal, State, or local law to grant a franchise;

(11) the term "grade B contour" means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

(12) the term "interactive on-demand services" means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

(13) the term "multichannel video programming distributor" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;

(14) the term "other programming service" means information that a cable operator makes available to all subscribers generally;

(15) the term "person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

(16) the term "public, educational, or governmental access facilities" means--

(A) channel capacity designated for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

(17) the term "service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

(18) the term "State" means any State, or political subdivision, or agency thereof;

(19) the term "usable activated channels" means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and

(20) the term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

CREDIT(S)

(June 19, 1934, c. 652, Title VI, § 602, as added Oct. 30, 1984, Pub.L. 98-549, § 2, 98 Stat. 2780, and amended Oct. 5, 1992, Pub.L. 102-385, § 2(c), 106 Stat. 1463; Feb. 8, 1996, Pub.L. 104-104, Title III, §§ 301(a), 302(b)(2), 110 Stat. 114, 124.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1984 Acts. House Report No. 98-934 and Statements by Legislative Leaders, see 1984 U.S. Code Cong. and Adm.News, p. 4655.

1992 Acts. Senate Report No. 102-92 and House Conference Report No. 10-862, see 1992 U.S. Code Cong. and Adm. News, p. 1133.

1996 Acts. House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

Codifications

Amendment by Pub.L. 104-104, § 302(b)(2)(A), was executed to this section, notwithstanding directory language indicating section 531 of this title, as the probable intent of Congress.

Amendments

1996 Amendments. Par. (6)(B). Pub.L. 104-104, § 301(a)(1), added "or use" following "the selection".

Par. (7)(B). Pub.L. 104-104, § 301(a)(2), struck out provisions relating to size of dwellings and type of ownership, control, or management.

Par. (7)(D), (E). Pub.L. 104-104, § 302(b)(2)(A), added subpar. (D) and redesignated former subpar. (D) as subpar. (E).

Par. (12). Pub.L. 104-104, § 302(b)(2)(B), (C), added par. (12) and redesignated former par. (12) as (13).

Pars. (13) to (20). Pub.L. 104-104, § 302(b)(2)(B), redesignated former pars. (12) to (19) as pars. (13) to (20), respectively.

1992 Amendments. Par. (1). Pub.L. 102-385, § 2(c)(4), (5), added par. (1) and redesignated former par. (1) as (2).

Par. (2). Pub.L. 102-385, § 2(c)(4), redesignated former par. (1) as (2) and former par. (2) as (3).

Par. (3). Pub.L. 102-385, § 2(c)(4), redesignated former par. (2) as (3) and former par. (3) as (4).

Par. (4). Pub.L. 102-385, § 2(c)(4), redesignated former par. (3) as (4) and former par. (4) as (5).

Par. (5). Pub.L. 102-385, § 2(c)(4), redesignated former par. (4) as (5) and former par. (5) as (6).

Par. (6). Pub.L. 102-385, § 2(c)(4), redesignated former par. (5) as (6) and former par. (6) as (7).

Par. (7). Pub.L. 102-385, § 2(c)(4), redesignated former par. (6) as (7) and former par. (7) as (8).

Par. (8). Pub.L. 102-385, § 2(c)(4), redesignated former par. (7) as (8) and former par. (8) as (9).

Par. (9). Pub.L. 102-385, § 2(c)(4), redesignated former par. (8) as (9) and former par. (9) as (10).

Par. (10). Pub.L. 102-385, § 2(c)(4), redesignated former par. (9) as (10) and former par. (10) as (11).

Par. (11). Pub.L. 102-385, § 2(c)(3), (4), redesignated former par. (10) as (11) and former par. (11) as (13).

Par. (12). Pub.L. 102-385, § 2(c)(3), (6), added par. (12) and redesignated former par. (12) as (14).

Par. (13). Pub.L. 102-385, § 2(c)(3), redesignated former par. (11) as (13) and former par. (13) as (15).

Par. (14). Pub.L. 102-385, § 2(c)(3), redesignated former par. (12) as (14) and former par. (14) as (16).

Par. (15). Pub.L. 102-385, § 2(c)(3), redesignated former par. (13) as (15) and former par. (15) as (17).

Par. (16). Pub.L. 102-385, § 2(c)(1), (3), redesignated former par. (14) as (16) and former par. (16) as (19).

Par. (17). Pub.L. 102-385, § 2(c)(3), redesignated former par. (15) as (17).

Par. (18). Pub.L. 102-385, § 2(c)(2), (7), added par. (18).

Par. (19). Pub.L. 102-385, § 2(c)(1), redesignated former par. (16) as (19).

Effective and Applicability Provisions

1992 Acts. Amendments by Pub.L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub.L. 102-385, set out as a note under section 325 of this title.

1984 Acts. Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub.L. 98-549, set out as a note under section 521 of this title.

CROSS REFERENCES

Scope of exclusive rights in sound recordings and retransmission including a multichannel video programming distributor as defined in this section, see 17 USCA § 114.

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Erosion of First Amendment protections of speech and press: The "must carry" provisions of the 1992 Cable Act. 24 Cap.U.L.Rev. 423 (1995).

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183 ALR. Fed. 379, Propriety of Federal Court's Abstention, Under Railroad Commission of Tex. v. Pullman Co., 312 U.S. 496, 61 S. Ct. 643, 85 L. Ed. 971 (1941), as to Federal Constitutional Due Process or Equal Protection....

41 ALR 3rd 384, Validity and Construction of Municipal Ordinances Regulating Community Antenna Television Service (CATV).

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NOTES OF DECISIONS

1. Constitutionality

Cable Communications Policy Act provision exempting from definition of cable system for which franchise was required facility that served only subscribers in one or multiple unit dwellings under common ownership, control or management, even though system whose transmission lines interconnected separately owned and managed buildings or lines use or cross any public right-of-way was subject to franchise requirement, was supported by rational basis; distinction could be rationally based on a regulatory efficiency model assuming that system serving only commonly owned or managed buildings without crossing public right-of-way would typically be limited in size or would share some other attribute affecting their impact on welfare of cable viewers such that regulators could safely ignore sys-

tems. F.C.C. v. Beach Communications, Inc., U.S.Dist.Col.1993, 113 S.Ct. 2096, 508 U.S. 307, 124 L.Ed.2d 211, on remand 10 F.3d 811, 304 U.S.App.D.C. 36. Constitutional Law ⚿3686; Telecommunications ⚿1205

2. Construction

Federal Communications Commission (FCC) ruling, that 1984 Cable Act provision prohibiting local telephone companies from providing video programming in their telephone service areas did not extend to video programming via wireless cable, was permissible construction of ambiguous statute; indications that Congress meant only to reach video programming via cable were sufficiently strong to render provision ambiguous, and Court of Appeals would decline to infer intent contrary to Commission's construction from Congress' generally articulated purpose of increasing diversity in ownership of communications outlets. American Scholastic TV Programming Foundation v. F.C.C., C.A.D.C.1995, 46 F.3d 1173, 310 U.S.App.D.C. 256, rehearing and suggestion for rehearing in banc denied. Telecommunications ⚿1236(2)

3. Review

Ruling, in which Federal Communications Commission (FCC) discussed the definitional issues regarding interactive video services, did not provide grounds for reconsideration of court's determination that telephone company's proposed Internet Protocol (IP)-based video programming service was a "cable service" under the Cable Communications Policy Act, as ruling explicitly did not address what particular services could fall within the definition of "interactive on-demand services," nor the regulatory classification of any particular video services, nor whether video services provided over IP were or were not cable services. Office of Consumer Counsel v. Southern New England Telephone Co., D.Conn.2007, 514 F.Supp.2d 345. Telecommunications ⚿1243

Equal protection challenge, of operator of noncommon cable television systems in city and operator's subscribers, to Cable Communications Policy Act provision requiring operators of such systems, but not operators of cable television systems connecting commonly owned buildings, to obtain franchise from local franchising authority was ripe for adjudication; challenge did not depend on particular circumstances. Liberty Cable Co., Inc. v. City of New York, S.D.N.Y.1995, 893 F.Supp. 191, affirmed 60 F.3d 961, certiorari denied 116 S.Ct. 1262, 516 U.S. 1171, 134 L.Ed.2d 210. Federal Courts ⚿13; Constitutional Law ⚿978

4. Cable operator

Cable broadband internet service was not a "cable service" but instead was part "telecommunications service" and part "information service" within meaning of Telecommunications Act. Brand X Internet Services v. F.C.C., C.A.9 2003, 345 F.3d 1120, rehearing and suggestion for rehearing en banc denied , certiorari granted 125 S.Ct. 654, 543 U.S. 1018, 160 L.Ed.2d 494, certiorari granted 125 S.Ct. 655, 543 U.S. 1018, 160 L.Ed.2d 494, certiorari denied 125 S.Ct. 664, 543 U.S. 1021, 160 L.Ed.2d 497, reversed and remanded 125 S.Ct. 2688, 545 U.S. 967, 162 L.Ed.2d 820, on remand 435 F.3d 1053. Telecommunications ⚿455(1)

Federal Communications Commission (FCC) decision that operator of a satellite master antenna television system (SMATV) was not a "cable operator" of a "cable system," and thus was not subject to requirement that it obtain franchise from local government, was entitled to deference under *Chevron*, since governing statutes were ambiguous, and FCC's interpretation of statutes was reasonable, in view of factors including fact that operator's facilities were entirely on private property. City of Chicago v. F.C.C., C.A.7 1999, 199 F.3d 424, certiorari denied 121 S.Ct. 71, 531 U.S. 825, 148 L.Ed.2d 35. Telecommunications ⚿1293

Video programmer was not "cable operator" under Communications Act of 1934, and thus, programmer was not required to enter into cable-television franchise agreement with city; even if arrangement between programmer and its corporate sibling were "cable system," programmer's mere ownership of satellite dishes, tower, antennae, and

"headend" did not amount to "significant interest" in or "ownership" of that system, and even though programmer and sibling were owned by same corporate entity, they operated independently of one another. City of Austin v. Southwestern Bell Video Services, Inc., C.A.5 (Tex.) 1999, 193 F.3d 309, rehearing denied, certiorari denied 120 S.Ct. 1708, 529 U.S. 1082, 146 L.Ed.2d 511. Telecommunications 1214

Telephone company providing "video dialtone" service is not subject to cable franchise requirement of Cable Communications Policy Act; Federal Communications Commission's (FCC) definition of term "transmission" of programming under Act's definition of "cable service" to require active participation in selection and distribution of video programming was reasonable, and Commission's determination that telephone company providing video dial tone service is not "cable operator" under Act was also reasonable. National Cable Television Ass'n, Inc. v. F.C.C., C.A.D.C.1994, 33 F.3d 66, 308 U.S.App.D.C. 221. Telecommunications 1214

Cable company and its two subsidiaries were a single operator and a single system, so that city could properly collect franchise fee for service provided by one subsidiary to university residence halls even though city's franchise was granted to the other subsidiary, where the parent had negotiated for the physical facilities to carry the franchisee's cable service and was cosignatory for rental of city's transmission line poles and the service was delivered through joint efforts of the related companies, the signals being received at the same location. City of Ames, Iowa v. Heritage Communications, Inc., C.A.8 (Iowa) 1988, 861 F.2d 185. Telecommunications 1215

Cable Communications Policy Act of 1984 (CCPA), providing that a government entity could obtain personally identifiable information concerning a cable subscriber pursuant to a court order,did not authorize owners of copyrights in works allegedly downloaded from the Internet and distributed utilizing peer-to-peer (P2P) file-sharing to serve an ex parte subpoena on a college to discover information about unknown Doe defendants; college was not a "cable operator," and none of the owners were a "government entity" within the meaning of the statute. Interscope Records v. Does 1-7, E.D.Va.2007, 494 F.Supp.2d 388. Telecommunications 1346

Providers of wireless broadband services, which did not provide their services over a cable system or use public rights-of-way in transmitting programming, and thus did not qualify as cable operators in their own right, could not be considered "cable operators" subject to subscriber privacy provisions of Cable Communications Act (CCA), where they were not owned or controlled by, or under common ownership with, an entity that operated cable system. Santellana v. Nucentrix Broadband Networks, Inc., S.D.Tex.2002, 211 F.Supp.2d 848. Telecommunications 1237

Neither city, city council, nor city cable television access authority was "cable operator" within meaning of Cable Communications Policy Act and, thus, none of those parties violated Act provision protecting against exercise of editorial control by cable operator for purposes of African-American cable television programmer's § 1983 civil rights claim and claim under alleged implied right of action under Act, alleging that defendants acted with intent to discriminate when they eliminated city cable television system's public access channel, where cable service was provided by separate cable operator, none of parties controlled or bore responsibility for operation of cable system, and programmer did not allege joint action and complicity of operator. Britton v. City of Erie, Pa., W.D.Pa.1995, 933 F.Supp. 1261, affirmed 100 F.3d 946. Civil Rights 1527

Cable Communications Policy Act's disclosure and record-keeping provisions applied to cable operator that did not provide two-way cable service. Warner v. American Cablevision of Kansas City, Inc., D.Kan.1988, 699 F.Supp. 851, cause dismissed and remanded. Telecommunications 1237

4a. Cable service

Internet Protocol (IP)-based video programming service constituted "cable service" within meaning of Cable Communications Policy Act, even though subscribers used service by sending signals from remote control "upstream" to

request particular channels or services, rather than choosing from among programming operator automatically sent to all subscribers' set-top boxes; flow of video programming was one-way, thus comporting with statutory definition of "one-way transmission ... of ... video programming," and regulation of IP-based service under Act comported with congressional intent. Office of Consumer Counsel v. Southern New England Telephone Co., D.Conn.2007, 515 F.Supp.2d 269, reconsideration denied 514 F.Supp.2d 345. Telecommunications 1234

Issue regarding effect of Federal Communications Commission (FCC) ruling that cable modem service did not constitute a "cable service" under the Cable Communications Policy Act, had already been fully considered, and, thus, was an insufficient ground for granting reconsideration of court's determination that telephone company's proposed Internet Protocol (IP)-based video programming service was a "cable service" under the Act. Office of Consumer Counsel v. Southern New England Telephone Co., D.Conn.2007, 514 F.Supp.2d 345. Telecommunications 1243

5. Cable system

That cables for satellite master antenna television system merely crossed public street, in providing service to apartment complex, did not establish that system "used a public right-of-way," as would take system outside definition of an "exempt private system" under the Cable Communications Policy Act of 1984, and subject it to local franchise regulation. Guidry Cablevision/Simul Vision Cable System v. City of Ballwin, C.A.8 (Mo.) 1997, 117 F.3d 383, rehearing and suggestion for rehearing en banc denied. Telecommunications 1222

External, quasi-private satellite master antenna television system using wires or other closed transmission paths to connecting separately-owned, controlled and managed multiple-unit dwellings without using public rights-of-way provided cable services to multiple subscribers within community, was "cable system," and was not within private-cable exemption, even though each apartment building was itself under common ownership, control, or management; definition clause could not reasonably be interpreted to require cable system to interconnect whole community. Beach Communications, Inc. v. F.C.C., C.A.D.C.1992, 959 F.2d 975, 294 U.S.App.D.C. 377. Telecommunications 1214

Internet Protocol (IP)-based video programming service, which constituted "cable service" within meaning of Cable Communications Policy Act, was provided over "cable system" within meaning of Act; Act's definition of cable system included facilities used in transmission of video programming directly to subscribers, which IP-based service was, "unless the extent of such use is solely to provide interactive on-demand services," which did not describe IP-based service. Office of Consumer Counsel v. Southern New England Telephone Co., D.Conn.2007, 515 F.Supp.2d 269, reconsideration denied 514 F.Supp.2d 345. Telecommunications 1234

Claims against telecommunications company that developed new television service, alleging that such service constituted a "cable service" under federal Cable Act, such that the service would be subject to state cable regulation in Connecticut, was not rendered moot by new state legislation, which created a new regulatory framework governing video franchising; even if the issue of what franchising requirements governed telecommunication company's service in Connecticut became moot with the enactment of new legislation, the remaining live issues which flowed from the federal classification of the new television service supplied the constitutional requirement of a case or controversy because cable companies would still be competitively disadvantaged if telecommunication company did not have to comply with federal law. Office of Consumer Counsel v. Southern New England Telephone Co., D.Conn.2008, 565 F.Supp.2d 384. Telecommunications 1201

Issue of whether telephone company's proposed video programming service was "cable service" under Cable Communications Policy Act involved fact questions that could not be resolved on motion to dismiss cable operators' claim that state public utility commission's determination that service did not fall within scope of Cable Act violated their equal protection and due process rights. Office of Consumer Counsel v. Southern New England telephone Co.,

D.Conn.2007. 502 F.Supp.2d 277. Federal Civil Procedure ⚿1831

Under Cable Communications Policy Act, satellite master antenna television (SMATV) is type of cable service that can fit within private cable exemption and, when it does, need not obtain franchise. Liberty Cable Co., Inc. v. City of New York, S.D.N.Y.1995, 893 F.Supp. 191, affirmed 60 F.3d 961, certiorari denied 116 S.Ct. 1262, 516 U.S. 1171, 134 L.Ed.2d 210. Telecommunications ⚿1214

6. Franchising authority

Air Force is "franchising authority" within meaning of the Cable Television Consumer Protection and Competition Act of 1992. Cox Cable Communications, Inc. v. U.S., C.A.11 (Ga.) 1993, 992 F.2d 1178, on remand 866 F.Supp. 553. Telecommunications ⚿1214

City was "franchising authority" within meaning of Cable Communications Policy Act of 1934, and thus could regulate only to limit of authority granted in Act. City of Burlington v. Mountain Cable Co., Vt.1988, 559 A.2d 153, 151 Vt. 161, certiorari denied 109 S.Ct. 3245, 492 U.S. 919, 106 L.Ed.2d 591. Telecommunications ⚿1214

47 U.S.C.A. § 522, 47 USCA § 522

Current through P.L. 111-10 (excluding P.L. 111-5 and 111-8) approved 3-20-09

END OF DOCUMENT

C

Effective: February 8, 1996

United States Code Annotated Currentness
Title 47. Telegraphs, Telephones, and Radiotelegraphs
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter V-A. Cable Communications
Part II. Use of Cable Channels and Cable Ownership Restrictions
→ § 531. Cable channels for public, educational, or governmental use

(a) Authority to establish requirements with respect to designation or use of channel capacity

A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.

(b) Authority to require designation for public, educational, or governmental use

A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 546 of this title, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

(c) Enforcement authority

A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b) of this section.

(d) Promulgation of rules and procedures

In the case of any franchise under which channel capacity is designated under subsection (b) of this section, the franchising authority shall prescribe--

(1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and

(2) rules and procedures under which such permitted use shall cease.

(e) Editorial control by cable operator

Subject to section 544(d) of this title, a cable operator shall not exercise any editorial control over any public, educa-

tional, or governmental use of channel capacity provided pursuant to this section, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.

(f) "Institutional network" defined

For purposes of this section, the term "institutional network" means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

CREDIT(S)

(June 19, 1934, c. 652, Title VI, § 611, as added Oct. 30, 1984, Pub.L. 98-549, § 2, 98 Stat. 2782, and amended Feb. 8, 1996, Pub.L. 104-104, Title V, § 506(a), 110 Stat. 136.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1984 Acts. House Report No. 98-934 and Statements by Legislative Leaders, see 1984 U.S.Code Cong. and Adm.News, p. 4655.

1996 Acts. House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

Amendments

1996 Amendments. Subsec. (e). Pub.L. 104-104, § 506(a), added ", except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity" following "pursuant to this section".

Effective and Applicability Provisions

1984 Acts. Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub.L. 98-549, set out as a note under section 521 of this title.

Regulations for Prohibition of Programming Containing Obscene Material or Material Promoting Unlawful Conduct

Pub.L. 102-385, §§ 10(c), 28, Oct. 5, 1992, 106 Stat. 1486, 1503, eff. 60 days after Oct. 5, 1992, provided that: "Within 180 days following the date of the enactment of this Act [Oct. 5, 1992], the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a cable system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct."

LAW REVIEW COMMENTARIES

Cable television, new technologies and the First Amendment after Turner Broadcasting System, Inc. v. F.C.C. Erik Forde Ugland. 60 Mo.L.Rev. 799 (1995).

Erosion of First Amendment protections of speech and press: The "must carry" provisions of the 1992 Cable Act. 24 Cap.U.L.Rev. 423 (1995).

Open video systems and the Telecommunications Act. Monroe E. Price, 216 N.Y.L.J. 1 (Aug. 27, 1996).

Public access: Fortifying the electronic soapbox. 47 Fed.Comm.L.J. 123 (1994).

Riding on a diamond in the sky: The DBS set-aside provisions of the 1992 cable act. Richard L. Weber. 40 Wm. & Mary L.Rev. 1795 (1999).

Will they take away my video-phone if I get lousy ratings?: A proposal for a "video common carrier" statute in post-merger telecommunications. 94 Colum.L.Rev. 1558 (1994).

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Corpus Juris Secundum

CJS Constitutional Law § 870, Cable Television.
CJS Telecommunications § 189, Public, Educational, or Governmental Use.
CJS Telecommunications § 197, Judicial Proceedings.

RESEARCH REFERENCES

ALR Library

2006 ALR. Fed. 2nd Series 14, Construction and Application of Communications Act of 1934 and Telecommunications Act of 1996--United States Supreme Court Cases.

193 ALR. Fed. 139, "Sham" Exception to Application of Noerr-Pennington Doctrine, Exempting from Federal Antitrust Laws Joint Efforts to Influence Governmental Action Based on Petitioning Administrative or Judicial...

Encyclopedias

78 Am. Jur. Proof of Facts 3d 1, Equal Opportunity for Broadcast Time for Political Candidates.

Am. Jur. 2d Telecommunications § 171, Federal Regulation--Access Channels.

Am. Jur. 2d Telecommunications § 178, Cablecasting.

Forms

1AA West's Federal Forms § 353, Petitioner's or Appellant's Brief on the Merits--Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations Involved.

American Jurisprudence Legal Forms 2d § 245:59, Introductory Comments.

Am. Jur. Pl. & Pr. Forms Telecommunications § 67.20, Complaint in Federal Court--By Producer and Viewers of Public Access Channel Program--Against Franchised Cable Television Operator--Unlawful Control of Content of Programming--Refus...

NOTES OF DECISIONS

1. Constitutionality

Cable Television Consumer Protection and Competition Act provision which allows cable system operators to prohibit patently offensive or indecent programming transmitted over public access channels violates First Amendment; provision does not restore to operators editorial rights they once had, locally accountable bodies are capable of addressing programming problems, existence of system aimed at encouraging and securing programming that community considers valuable strongly suggests that "cable operator's veto" is less likely necessary to achieve statute's basic objective, and public/nonprofit programming control systems in place would normally avoid any child-related programming problems. (Per Justice Breyer with two Justices concurring and two Justices concurring in the judgment in part.) Denver Area Educational Telecommunications Consortium, Inc. v. F.C.C., U.S.Dist.Col.1996, 116 S.Ct. 2374, 518 U.S. 727, 135 L.Ed.2d 888, conformed to 1997 WL 225468. Constitutional Law 2140; Constitutional Law 2258; Telecommunications 1205; Telecommunications 1232

Public, educational, and governmental programming (PEG) provision of Cable Communications Policy Act does not violate First Amendment; cable television operator that asserted facial challenge to statute failed to show that no local cable television franchise authority could ever exercise statute's grant of authority in constitutional manner. Time Warner Entertainment Co., L.P. v. F.C.C., C.A.D.C.1996, 93 F.3d 957, 320 U.S.App.D.C. 294, rehearing in banc denied 105 F.3d 723, 323 U.S.App.D.C. 109. Constitutional Law 2140; Telecommunications 1205; Telecommunications 1230

Municipality's insistence upon finalization of franchise renewal agreement before issuing construction permits for cable television service provider to rebuild its physical infrastructure did not violate provider's First Amendment free speech rights, since requirement furthered municipality's substantial interest in mitigating any disruption to public rights-of-way and other construction impacts and provider did not identify any specific terms of possible renewal agreement that would have violated its First Amendment rights. Comcast of California I, Inc. v. City of Walnut Creek, Cal., N.D.Cal.2005, 371 F.Supp.2d 1147. Constitutional Law 2141; Telecommunications 1216

2. Severability

Cable Television Consumer Protection and Competition Act provision which allows cable system operators to prohibit patently offensive or indecent programming on leased access channels is severable from unconstitutional provisions regarding "segregate and block" requirements for leased access channels and "operator veto" for public access channels even though Act contains no express severability clause; presence of public access channel provision has little, if any, effect on leased access channels, law treats programming decisions on leased channels just as it treats all other channels in absence of "segregate and block" provisions, and, in light of Congress's basic objective of protecting children, Congress would have preferred one provision standing by itself to none. (Per Justice Breyer with three Justices concurring, and the Chief Justice and two Justices concurring in the judgment in part.) Denver Area Educational Telecommunications Consortium, Inc. v. F.C.C., U.S.Dist.Col.1996, 116 S.Ct. 2374, 518 U.S. 727, 135 L.Ed.2d 888, conformed to 1997 WL 225468. Statutes 64(2)

3. Purpose

For purposes of Cable Communications Policy Act provision governing use of cable television channel capacity for public, educational, or governmental use (PEG), underlying purposes to PEG channels include desire to respond to local needs, create space for voices that would not otherwise be heard, air programs needed by community that may not otherwise be commercially viable, and, for governmental channels, show local government at work. Time Warner Cable of New York City, a Div. of Time Warner Entertainment Co., L.P. v. City of New York, S.D.N.Y.1996, 943 F.Supp. 1357, affirmed 118 F.3d 917. Telecommunications 1230

4. Legislative intent

In Cable Communications Policy Act provision governing cable television operator's use of unused public, educational, and governmental use (PEG) channel capacity, Congress intended that any PEG-designated channel which had been fallow be returned to franchise authority for its use as quickly as possible when PEG programming becomes available for it. Time Warner Cable of New York City, a Div. of Time Warner Entertainment Co., L.P. v. City of New York, S.D.N.Y.1996, 943 F.Supp. 1357, affirmed 118 F.3d 917. Telecommunications 1230

5. State regulation or control

State statute, prohibiting cable television companies from prohibiting any program presented over public access or educational channel, was not federally preempted by Cable Communications Policy Act or Cable Television Consumer Protection and Competition Act as applied in cable television programmer's action against cable television company, arising from company's refusal to continue cablecasting installments of programmer's material over county system access channel, where company did not contend that programmer's program was obscene or sexually explicit, or that it solicited or promoted unlawful conduct. Glendora v. Kofalt, N.Y.Sup.1994, 616 N.Y.S.2d 138, 162 Misc.2d 166, modified 637 N.Y.S.2d 780, 224 A.D.2d 485, leave to appeal dismissed 670 N.E.2d 228, 646 N.Y.S.2d 987, 88 N.Y.2d 919. States 18.81; Telecommunications 1208

6. Governmental use

Governmental use of cable television channel which franchisor may require operator to set aside for such use under Cable Communications Policy Act, though not necessarily limited to televising of public hearings, cannot be so limitless as to include any programming selected by governmental unit. Time Warner Cable of New York City, a division of Time Warner Entertainment Co., L.P. v. Bloomberg L.P., C.A.2 (N.Y.) 1997, 118 F.3d 917. Telecommunications 1230

For purposes of determining whether to grant preliminary injunction against city regarding its placement of commercial financial news and 24-hour news programs on its public, educational, and governmental use (PEG) cable television channels, city's actions violated Cable Communications Policy Act provision governing use of channel capacity for governmental use; city's decision to air 24-hour news program, substantially identical to that aired on commercial channels, with relatively minor exception of inclusion of some minutes of local news, was use of PEG channel in a way clearly unintended by Congress, as city's use of its PEG channels was at odds with Act purposes of desire to respond to local needs, create space for otherwise unheard voices, air programs needed by community that would not otherwise be commercially viable, and show local government at work on governmental channels. Time Warner Cable of New York City, a Div. of Time Warner Entertainment Co., L.P. v. City of New York, S.D.N.Y.1996, 943 F.Supp. 1357, affirmed 118 F.3d 917. Telecommunications 1244

7. Educational use

Educational use of cable television channel which franchisor may require operator to set aside for such use under Cable Communications Policy Act, though not necessarily limited to traditional course instruction, cannot be so limitless as to include any program that has any conceivable educational value. Time Warner Cable of New York City, a division of Time Warner Entertainment Co., L.P. v. Bloomberg L.P., C.A.2 (N.Y.) 1997, 118 F.3d 917. Telecommunications 1230

8. Franchise agreements

For purposes of determining whether to grant preliminary injunction against city regarding its placement of commercial financial news and 24-hour news programs on its public, educational, and governmental use (PEG) cable television channels, city's franchise agreements with cable television operators did not permit city to place those programs on government channel, regardless of whether programs were shown with or without commercials, absent written permission from operator; franchise agreements contemplated only noncommercial uses for PEG stations, and programs were commercial in nature, given one programmer's clear commercial intentions and other programmer's admissions. Time Warner Cable of New York City, a Div. of Time Warner Entertainment Co., L.P. v. City of New York, S.D.N.Y.1996, 943 F.Supp. 1357, affirmed 118 F.3d 917. Telecommunications 1244

9. Editorial control

Under provision of Cable Communications Policy Act barring cable operator from exercising editorial control over programming submitted for telecasting on public access channels, cable operator could, without seeking the assistance of a court, refuse to cablecast on a public access channel any programming that did not meet the legal criteria for dissemination in that forum. Goldberg v. Cablevision Systems Corp., C.A.2 (N.Y.) 2001, 261 F.3d 318. Telecommunications 1230

Preliminary injunction preventing city from placing commercially produced business and news services on city's educational and governmental use cable television channels, which city required for its use under Cable Communications Policy Act, did not enable cable operators to violate section of Act prohibiting cable operator from exercising any editorial control over such educational or governmental use of channel capacity, as section did not prevent operators from seeking to enforce contractual limitations on city's use of such channels. Time Warner Cable of New York City, a division of Time Warner Entertainment Co., L.P. v. Bloomberg L.P., C.A.2 (N.Y.) 1997, 118 F.3d 917. Telecommunications 1244

Cable television franchisor's requirement that programmer sign public access user agreement as condition for cablecasting his programs over franchisor's public access channel did not constitute "editorial control," within meaning of Cable Communications Policy Act section prohibiting such control; agreement required programmer to comply with

franchisor's public access rules, and to protect franchisor from loss or liability, but did not otherwise limit nature or content of programming. Goldberg v. Cablevision Systems Corp., E.D.N.Y.2002, 193 F.Supp.2d 588. Telecommunications 1230

Cable television company's refusal to show segment of program offered for broadcast on its public access channel, in which image of credit card was displayed on screen and viewers were given opportunity to purchase tapes of program, did not amount to prohibited exercise of editorial control over programs carried on public access channel, in violation of requirements of the federal Cable Communications Policy Act or the Cable Television Consumer Protection Act, or of parallel requirement of New York law; refusal to broadcast this segment of program did not prevent producer of program from expressing any ideas or point of view, but merely preserved noncommercial nature of public access channel, which was characteristic recognized by both federal and New York law. Goldberg v. Cablevision Systems Corp., E.D.N.Y.1999, 69 F.Supp.2d 398, vacated 261 F.3d 318. Telecommunications 1230

Group of cable television operators did not have right under Cable Communications Policy Act to use channels designated for public, educational, and governmental use (PEG) and, thus, group did not have First Amendment right to editorial discretion in those channels, for purposes of group's action against city, seeking preliminary injunction against city regarding city's placement of commercial financial news and 24-hour news programs on its PEG cable television channels; neither Act provision governing operator's use of unused PEG channel capacity, nor Act provision stating that franchising authority may establish franchise requirements as to PEG channel capacity only to extent provided in statutory section, provided group right to use PEG channels. Time Warner Cable of New York City, a Div. of Time Warner Entertainment Co., L.P. v. City of New York, S.D.N.Y.1996, 943 F.Supp. 1357, affirmed 118 F.3d 917. Constitutional Law 2140; Telecommunications 1230; Constitutional Law 2142

Producer of cable public access program, whose program's cablecast dates were reduced to two per month, failed to demonstrate likelihood of success on merits of claim that cable company exercised editorial control over her program or discriminated against her in its allocation of channel time or that balance of hardships tipped decidedly in her favor, for purposes of motion for preliminary injunction; company's rules coupled with affidavit by director of government and public affairs for cable company stating that programs by 37 other producers were rescheduled to two cablecast dates per month to accommodate great demand for public access channel time and had resulted in additional 12 monthly programs and several individual shows and company's evidence tended to show that it had reduced all series programs to two cablecasts per month. Glendora v. Hostetter, S.D.N.Y.1996, 916 F.Supp. 1339, affirmed 104 F.3d 353, certiorari denied 117 S.Ct. 1708, 520 U.S. 1217, 137 L.Ed.2d 833. Telecommunications 1244

Intermediate cable program syndicator and its personnel did not violate First Amendment when they rejected programming that appeared to have been produced as outlet on public access cable television for producer to discuss pending personal lawsuits; syndicator was not provider prohibited from exercising editorial control on public access and there was no indication that producer attempted to lease time. Glendora v. Dolan, S.D.N.Y.1994, 871 F.Supp. 174, affirmed 48 F.3d 1212, certiorari denied 115 S.Ct. 1827, 514 U.S. 1098, 131 L.Ed.2d 748. Constitutional Law 2142; Telecommunications 1230

Cable television companies' refusal to telecast program on their public access channels unless program had local sponsor did not violate provision of Cable Communications Policy Act and Cable Television Consumer Protection and Competition Act prohibiting cable operators from exercising editorial control over public access cable channels. Glendora v. Levin, C.A.6 (Mich.) 2001, 24 Fed.Appx. 474, 2001 WL 1587415, Unreported. Telecommunications 1230

10. Private right of action

Provision of Cable Communications Policy Act (CCPA), generally prohibiting cable operators from exercising edi-

torial control over use of public access cable channels, created private cause of action enforceable by producer of public access television programming; producer was within class of intended beneficiaries of statute, subsequent legislative history indicated Congressional intent to create implied cause of action, private remedy was consistent with Congress's legislative scheme, and statute's goal of permitting free flow of information was not a goal traditionally left to states. McClellan v. Cablevision of Connecticut, Inc., C.A.2 (Conn.) 1998, 149 F.3d 161. Telecommunications 1249

Cable television operators seeking to enforce contractual limitations on city's use of cable channels which franchisor may require operator to set aside for educational and governmental uses, under Cable Communications Policy Act, should be able, in enforcing its own rights, to assert third-party interests of those whom such channels were intended to serve. Time Warner Cable of New York City, a division of Time Warner Entertainment Co., L.P. v. Bloomberg L.P., C.A.2 (N.Y.) 1997, 118 F.3d 917. Telecommunications 1230

There was no private right of action under Cable Communications Policy Act (Cable Act) provision barring stations from exercising editorial control over programming, precluding suit by television programmer seeking to compel cable operator to show controversial footage on abortion issue; statute did not confer rights on programmers, statute did not require that channels be set aside for public access, there was provision for enforcement of statute at behest of cable operator, and Congress specifically provided for private right of act elsewhere in Cable Act. Leach v. Mediacom, S.D.Iowa 2003, 240 F.Supp.2d 994, affirmed 373 F.3d 895, rehearing and rehearing en banc denied. Action 3; Telecommunications 1249

To determine whether implied private right of action existed under Cable Communications Policy Act and Cable Television Consumer Protection and Competition Act provision governing editorial control by cable operator, district court's focal point was Congress' intent in enacting statute. Glendora v. Cablevision Systems Corp. S.D.N.Y.1995, 893 F.Supp. 264. Telecommunications 1249

Group seeking to use cable television channel had an implied right of action under provision of the Cable Television Policy Act that cable operators not exercise any editorial control over cable channels dedicated to public access use. Missouri Knights of the Ku Klux Klan v. Kansas City, Mo., W.D.Mo.1989, 723 F.Supp. 1347. Telecommunications 1243

Cable television programmer, whose program had been cancelled by cable television company, had implied federal cause of action under Cable Communications Policy Act and Cable Television Consumer Protection and Competition Act provision governing editorial control by cable operator; as public user of cable channels, programmer was among class for whose especial benefit statute was enacted, language and structure of statute supported conclusion that Congress intended implied cause of action, implied right of action was consistent with underlying purposes of legislative scheme, and claim was not one traditionally relegated to state law in area basically concern of states. Glendora v. Cablevision Systems Corp. S.D.N.Y.1995, 893 F.Supp. 264. Telecommunications 1249

11. Injunctions

Cable television operators made sufficient showing of irreparable injury to support preliminary injunction preventing city from placing commercially produced business and news services on city's educational and governmental use cable channels, in alleged violation of franchise agreements and Cable Communications Policy Act, as operators would be deprived of control over mix of programming to be carried on its cable system in manner that could not be remedied after the fact. Time Warner Cable of New York City, a division of Time Warner Entertainment Co., L.P. v. Bloomberg L.P., C.A.2 (N.Y.) 1997, 118 F.3d 917. Telecommunications 1244

Ex Parte Young exception to Eleventh Amendment immunity permitted cable operators to seek injunctive relief against individual members of Vermont's Public Service Board, in their official capacity, enjoining the enforcement,

under Cable Communications Policy Act, of Board's order renewing operators' franchises subject to various conditions and limitations; operators' prayer for injunctive relief allowed district court to make straightforward inquiry into whether there was ongoing violation of federal law, and Act did not create remedial scheme that was sufficient to supplant *Ex Parte Young* exception. Mountain Cable Co. v. Public Service Bd. of State of Vt., D.Vt.2003, 242 F.Supp.2d 400. Federal Courts ⚿269; Federal Courts ⚿272

For purposes of determining whether to grant preliminary injunction against city regarding its placement of commercial financial news and 24-hour news programs on its public, educational, and governmental use (PEG) cable television channels, city, through its course of conduct, had acted to compel group of cable operators to add 24-hour news program to its system of commercial channels, those actions had direct, immediate, and chilling effect on group's exercise of its editorial discretion protected under First Amendment, and, thus, group had carried its burden of establishing irreparable harm; city could not select particular program to place on its PEG channels that did not belong on such channel, with specific purpose of overriding group's editorial discretion by forcing group to alter its editorial decision. Time Warner Cable of New York City, a Div. of Time Warner Entertainment Co., L.P. v. City of New York, S.D.N.Y.1996, 943 F.Supp. 1357, affirmed 118 F.3d 917. Telecommunications ⚿1244

12. Complaint

Complaint of producer of public access cable television program that merely speculated that editorial influence of some undefined sort was possibly exerted in cable television station's random process of assigning slots was insufficient to support claim challenging station's inappropriate exercise of "editorial control." Bernas v. Cablevision Systems Corp., C.A.2 (N.Y.) 2007, 215 Fed.Appx. 64, 2007 WL 397395, Unreported. Telecommunications ⚿1230

47 U.S.C.A. § 531, 47 USCA § 531

Current through P.L. 111-10 (excluding P.L. 111-5 and 111-8) approved 3-20-09

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C

Effective: February 8, 1996

United States Code Annotated Currentness
Title 47. Telegraphs, Telephones, and Radiotelegraphs
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter V-A. Cable Communications
Part II. Use of Cable Channels and Cable Ownership Restrictions
§ 532. Cable channels for commercial use

(a) Purpose

The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.

(b) Designation of channel capacity for commercial use

(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

(A) An operator of any cable system with 36 or more (but not more than 54) activated channels shall designate 10 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(B) An operator of any cable system with 55 or more (but not more than 100) activated channels shall designate 15 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(C) An operator of any cable system with more than 100 activated channels shall designate 15 percent of all such channels.

(D) An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator, unless the cable system is required to provide such channel capacity under the terms of a franchise in effect on October 30, 1984.

(E) An operator of any cable system in operation on October 30, 1984, shall not be required to remove any service actually being provided on July 1, 1984, in order to comply with this section, but shall make channel capacity available for commercial use as such capacity becomes available until such time as the cable operator is in full compliance with this section.

(2) Any Federal agency, State, or franchising authority may not require any cable system to designate channel capacity for commercial use by unaffiliated persons in excess of the capacity specified in paragraph (1), except as otherwise provided in this section.

(3) A cable operator may not be required, as part of a request for proposals or as part of a proposal for renewal, subject to section 546 of this title, to designate channel capacity for any use (other than commercial use by unaffiliated persons under this section) except as provided in sections 531 and 557 of this title, but a cable operator may offer in a franchise, or proposal for renewal thereof, to provide, consistent with applicable law, such capacity for other than commercial use by such persons.

(4) A cable operator may use any unused channel capacity designated pursuant to this section until the use of such channel capacity is obtained, pursuant to a written agreement, by a person unaffiliated with the operator.

(5) For the purposes of this section, the term "commercial use" means the provision of video programming, whether or not for profit.

(6) Any channel capacity which has been designated for public, educational, or governmental use may not be considered as designated under this section for commercial use for purpose of this section.

(c) Use of channel capacity by unaffiliated persons; editorial control; restriction on service; rules on rates, terms, and conditions

(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) of this section for commercial use, the cable operator shall establish, consistent with the purpose of this section and with rules prescribed by the Commission under paragraph (4), the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

(2) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

(3) Any cable system channel designated in accordance with this section shall not be used to provide a cable service that is being provided over such system on October 30, 1984, if the provision of such programming is intended to avoid the purpose of this section.

(4)(A) The Commission shall have the authority to--

(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

(ii) establish reasonable terms and conditions for such use, including those for billing and collection; and

(iii) establish procedures for the expedited resolution of disputes concerning rates or carriage under this section.

(B) Within 180 days after October 5, 1992, the Commission shall establish rules for determining maximum reasonable rates under subparagraph (A)(i), for establishing terms and conditions under subparagraph (A)(ii), and for providing procedures under subparagraph (A)(iii).

(d) Right of action in district court; relief; factors not to be considered by court

Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available for use pursuant to this section may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available. If the court finds that the channel capacity sought by such person has not been made available in accordance with this section, or finds that the price, terms, or conditions established by the cable operator are unreasonable, the court may order such system to make available to such person the channel capacity sought, and further determine the appropriate price, terms, or conditions for such use consistent with subsection (c) of this section, and may award actual damages if it deems such relief appropriate. In any such action, the court shall not consider any price, term, or condition established between an operator and an affiliate for comparable services.

(e) Petition to Commission; relief

(1) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available pursuant to this section may petition the Commission for relief under this subsection upon a showing of prior adjudicated violations of this section. Records of previous adjudications resulting in a court determination that the operator has violated this section shall be considered as sufficient for the showing necessary under this subsection. If the Commission finds that the channel capacity sought by such person has not been made available in accordance with this section, or that the price, terms, or conditions established by such system are unreasonable under subsection (c) of this section, the Commission shall, by rule or order, require such operator to make available such channel capacity under price, terms, and conditions consistent with subsection (c) of this section.

(2) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by an operator, the Commission may also establish any further rule or order necessary to assure that the operator provides the diversity of information sources required by this section.

(3) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by any person who is an operator of more than one cable system, the Commission may also establish any further rule or order necessary to assure that such person provides the diversity of information sources required by this section.

(f) Presumption of reasonableness and good faith

In any action brought under this section in any Federal district court or before the Commission, there shall be a presumption that the price, terms, and conditions for use of channel capacity designated pursuant to subsection (b) of this section are reasonable and in good faith unless shown by clear and convincing evidence to the contrary.

(g) Promulgation of rules

Notwithstanding sections 541(c) and 543(a) of this title, at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources. Any rules promulgated by the Commission pursuant to this subsection shall not preempt authority expressly granted to franchising authorities under this subchapter.

(h) Cable service unprotected by Constitution

Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority or the cable operator is obscene, or is in conflict with

community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States. This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

(i) Programming from qualified minority or educational programming sources

(1) Notwithstanding the provisions of subsections (b) and (c) of this section, a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming source, whether or not such source is affiliated with the cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming or educational programming on that cable system under this subsection.

(2) For purposes of this subsection, the term "qualified minority programming source" means a programming source which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term "minority" is defined in section 309(i)(3)(C)(ii) of this title.

(3) For purposes of this subsection, the term "qualified educational programming source" means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding $15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

(4) Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 535 of this title.

(j) Single channel access to indecent programming

(1) Within 120 days following October 5, 1992, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) of this section by--

(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

(C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).

CREDIT(S)

(June 19, 1934, c. 652, Title VI, § 612, as added Oct. 30, 1984, Pub.L. 98-549, § 2, 98 Stat. 2782, and amended Oct. 5, 1992, Pub.L. 102-385, §§ 9, 10(a), (b), 106 Stat. 1484, 1486; Feb. 8, 1996, Pub.L. 104-104, Title V, § 506(b), 110 Stat. 137.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1984 Acts. House Report No. 98-934 and Statements by Legislative Leaders, see 1984 U.S.Code Cong. and Adm.News, p. 4655.

1992 Acts. Senate Report No. 102-92 and House Conference Report No. 10-862, see 1992 U.S. Code Cong. and Adm. News, p. 1133.

1996 Acts. House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

Amendments

1996 Amendments. Subsec. (c)(2). Pub.L. 104-104, § 506(b), substituted "a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and" for "an operator".

1992 Amendments. Subsec. (a). Pub.L. 102-385, § 9(a), included promotion of competition in delivery of diverse sources of programming within purposes of section.

Subsec. (b)(5). Pub.L. 102-385, § 9(d), struck out provision defining term "activated channels".

Subsec. (c)(1). Pub.L. 102-385, § 9(b)(1), inserted "and with rules prescribed by the Commission under paragraph (4)" after "purpose of this section".

Subsec. (c)(4). Pub.L. 102-385, § 9(b)(2), added par. (4).

Subsec. (h). Pub.L. 102-385, § 10(a)(1), inserted "or the cable operator" after "franchising authority".

Pub.L. 102-385, § 10(a)(2), added provision relating to prohibition of offensive programming.

Subsec. (i). Pub.L. 102-385, § 9(c), added subsec. (i).

Subsec. (j). Pub.L. 102-385, § 10(b), added subsec. (j).

Effective and Applicability Provisions

1992 Acts. Amendments by Pub.L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub.L. 102-385, set out as a note under section 325 of this title.

1984 Acts. Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub.L. 98-549, set out as a note under section 521 of this title.

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Cable television, new technologies and the First Amendment after Turner Broadcasting System, Inc. v. F.C.C. Erik Forde Ugland. 60 Mo.L.Rev. 799 (1995).

Crash test on the information superhighway: Constitutional problems with the 1992 cable act must-carry regulations. 11 Ga.St.U.L.Rev. 429 (1995).

"Denver Area" reveals struggle over free speech in new media. Robert T. Perry and Brian D. Graifman, 216 N.Y.L.J. 5 (Aug. 16, 1996).

Diverse programming vs. community standards: The constitutionality of municipal censorship of leased access cable. Comment, 27 San Diego L.Rev. 493 (1990).

Erosion of First Amendment protections of speech and press: The "must carry" provisions of the 1992 Cable Act. 24 Cap.U.L.Rev. 423 (1995).

Public access: Fortifying the electronic soapbox. 47 Fed.Comm.L.J. 123 (1994).

Will they take away my video-phone if I get lousy ratings?: A proposal for a "video common carrier" statute in post-merger telecommunications. 94 Colum.L.Rev. 1558 (1994).

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Corpus Juris Secundum

CJS Constitutional Law § 870, Cable Television.
CJS Telecommunications § 190, Commercial Use.
CJS Telecommunications § 193, Obscenity, Indecency, and the Like.

RESEARCH REFERENCES

ALR Library

2006 ALR. Fed. 2nd Series 14, Construction and Application of Communications Act of 1934 and Telecommunications Act of 1996--United States Supreme Court Cases.

Encyclopedias

78 Am. Jur. Proof of Facts 3d 1, Equal Opportunity for Broadcast Time for Political Candidates.

Am. Jur. 2d Telecommunications § 171, Federal Regulation--Access Channels.

Am. Jur. 2d Telecommunications § 175, Signal Carriage Requirements--Program Content Regulations.

Am. Jur. 2d Telecommunications § 178, Cablecasting.

Forms

1 West's Federal Forms § 68, Petition for Certiorari--Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations Involved.

1AA West's Federal Forms § 353, Petitioner's or Appellant's Brief on the Merits--Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations Involved.

American Jurisprudence Legal Forms 2d § 245:59, Introductory Comments.

Treatises and Practice Aids

Callmann on Unfair Compet., TMs. & Monopolies § 4:13, Exemptions from the Antitrust Laws--Radio and Television.

Federal Procedure, Lawyers Edition § 72:906, Petition to Enforce Duty to Make Channel Capacity Available for Commercial Use.

Federal Procedure, Lawyers Edition § 72:1022, Enforcing Duty to Make Cable Channel Capacity Available for Commercial Use.

NOTES OF DECISIONS

1. Constitutionality--Generally

Cable Television Consumer Protection and Competition Act provision which allows cable system operators to prohibit patently offensive or indecent programming transmitted over leased access channels is consistent with First

Amendment; permissive and flexible nature of provision, coupled with viewpoint-neutral application, is constitutionally permissible way to protect children from exposure to patently offensive sex-related material, while accommodating both First Amendment interests served by access requirements and those served in restoring to operators a degree of editorial control that Congress had previously removed. (Per Justice Breyer with three Justices concurring, and the Chief Justice and two Justices concurring in the judgment in part.) Denver Area Educational Telecommunications Consortium, Inc. v. F.C.C., U.S.Dist.Col.1996, 116 S.Ct. 2374, 518 U.S. 727, 135 L.Ed.2d 888, conformed to 1997 WL 225468. Constitutional Law 2140; Constitutional Law 2258; Telecommunications 1205; Telecommunications 1232

Cable Television Consumer Protection and Competition Act provision allowing cable system operators to prohibit "programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards" is not impermissibly vague; statute permits operators to screen programs only pursuant to written and published policy, "reasonable belief" qualifier is designed to provide legal excuse for at least one honest mistake from liability that might otherwise attach, and contours of reasonableness shield constrain discretion of operator as much as they protect it. (Per Justice Breyer with three Justices concurring, and the Chief Justice and two Justices concurring in the judgment in part.) Denver Area Educational Telecommunications Consortium, Inc. v. F.C.C., U.S.Dist.Col.1996, 116 S.Ct. 2374, 518 U.S. 727, 135 L.Ed.2d 888, conformed to 1997 WL 225468. Constitutional Law 2258; Telecommunications 1205; Telecommunications 1232

Cable Television Consumer Protection and Competition Act provision which requires, with respect to leased access channels, that cable system operators place patently offensive programming on separate channel, block channel from viewer access, and unblock channel within 30 days of subscriber's written request violates First Amendment; "segregate and block" requirements have obvious speech-restrictive effect on viewers and are not a narrowly, or reasonably, tailored effort to protect children from exposure to patently offensive materials, as Congress has utilized less restrictive means to protect children from patently offensive sexual material on unleased cable channels. Denver Area Educational Telecommunications Consortium, Inc. v. F.C.C., U.S.Dist.Col.1996, 116 S.Ct. 2374, 518 U.S. 727, 135 L.Ed.2d 888, conformed to 1997 WL 225468. Constitutional Law 2140; Telecommunications 1205; Telecommunications 1232

Leased access provisions of Cable Communications Policy Act do not violate First Amendment, despite claims that there was lack of any demonstration that provisions addressed real, nonconjectural harm and that there was loose fit between remedy of setting aside percentage of channel capacity and supposed harm. Time Warner Entertainment Co., L.P. v. F.C.C., C.A.D.C.1996, 93 F.3d 957, 320 U.S.App.D.C. 294, rehearing in banc denied 105 F.3d 723, 323 U.S.App.D.C. 109. Constitutional Law 2140; Telecommunications 1205; Telecommunications 1231

Cable Television Consumer Protection and Competition Act provision, which required cable television operators to segregate and block indecent programming operators decided to carry on leased access channels, was least restrictive means of achieving government's interest in limiting access of children to indecent programming for First Amendment purposes, given provision's effectiveness in limiting exposure of children to indecent programming and its insignificant restriction of adults' access to such material. Alliance for Community Media v. F.C.C., C.A.D.C.1995, 56 F.3d 105, 312 U.S.App.D.C. 141, certiorari granted 116 S.Ct. 471, 516 U.S. 973, 133 L.Ed.2d 401, affirmed in part , reversed in part 116 S.Ct. 2374, 518 U.S. 727, 135 L.Ed.2d 888, conformed to 1997 WL 225468. Constitutional Law 2258; Telecommunications 1205; Telecommunications 1232

2. ---- State action, constitutionality

Cable Television Consumer Protection and Competition Act section, which allowed cable television operators to prohibit indecent programming on leased access channels and public, educational, and governmental access channels, did not involve "state action" as required for First Amendment violation; fact that section authorized action by

private operators was not itself sufficient to trigger First Amendment, and government did not exercise coercive power or provide such significant encouragement that operators' choice to prohibit indecent programming had to be deemed to be that of government. Alliance for Community Media v. F.C.C., C.A.D.C.1995, 56 F.3d 105, 312 U.S.App.D.C. 141, certiorari granted 116 S.Ct. 471, 516 U.S. 973, 133 L.Ed.2d 401, affirmed in part , reversed in part 116 S.Ct. 2374, 518 U.S. 727, 135 L.Ed.2d 888, conformed to 1997 WL 225468. Constitutional Law ⚿2258; Telecommunications ⚿1232

There was sufficient nexus between federal government and challenged action on part of cable television services provider with respect to provider's total ban on indecent material on public and leased access channels as authorized by Cable Television Consumer Protection and Competition Act of 1992 so as to constitute "state action," for purposes of holding government responsible for infringing decision of private provider, where explicit purpose of 1992 Act was to suppress broadcast of indecent material on access channels and context of regulation revealed government's attempt to enlist help of private cable operators to censor indecent material on access cable. Altmann v. Television Signal Corp., N.D.Cal.1994, 849 F.Supp. 1335. Constitutional Law ⚿2142

Cable operator was not state actor with respect to its decisions, under indecency policy, not to transmit on its leased access channels certain programs submitted by independent producers of cable television programming, and thus could not be held liable for violating First Amendment; federal statute authorizing cable operators to exercise limited editorial control over leased-access-channel programming did not compel cable operator to do so, neither federal law requirement that cable operator maintain leased access channels nor grant of cable franchise by local government was sufficient to characterize cable operator's conduct of business as state action, and no evidence showed that cable operator and municipal franchising authorities jointly administered leased access channels or that government had control over or input into cable operator's editorial decisions. Loce v. Time Warner Entertainment Advance/Newhouse Partnership, C.A.2 (N.Y.) 1999, 191 F.3d 256. Constitutional Law ⚿2258

3. ---- Compelling state interest, constitutionality

Limitation on availability of access cable channels imposed by Cable Television Consumer Protection and Competition Act provisions allowing cable system operators to prohibit patently offensive or indecent programming transmitted over leased access channels is justified by government's interest in protecting children, permissive aspect of statute, and nature of medium. (Per Justice Breyer with three Justices concurring, and the Chief Justice and two Justices concurring in the judgment in part.) Denver Area Educational Telecommunications Consortium, Inc. v. F.C.C., U.S.Dist.Col.1996, 116 S.Ct. 2374, 518 U.S. 727, 135 L.Ed.2d 888, conformed to 1997 WL 225468. Constitutional Law ⚿2140; Constitutional Law ⚿2258; Telecommunications ⚿1205; Telecommunications ⚿1232

4. ---- Segregation plan, constitutionality

Cable television service provider's segregation plan with respect to indecent material must include adequate notice to current and future subscribers describing content and availability of new channels to make provider's plan "least restrictive" means of regulation and, therefore, constitutional under First Amendment; such notice must, at minimum, have following general characteristics: it must describe content of segregated and scrambled channels in accurate and fair manner and language of these descriptions must be carefully tailored to avoid creating unnecessary stigma on segregated channels; it must be provided to all subscribers within reasonable time upon creation of segregated channels; it must be displayed in prominent manner; and it must inform subscribers that channels will be unscrambled at their request at no cost. Altmann v. Television Signal Corp., N.D.Cal.1994, 849 F.Supp. 1335. Telecommunications ⚿1232

5. Availability of service

Federal Communications Commission's (FCC) choice of average implicit fee formula, in setting maximum rate for

leased access programming on cable television systems, was reasonable means of accomplishing purposes of statute on commercial use of cable channels, those being the promotion of leased access and the promotion of diversity through leased access without the creation of financial burden to cable operators. ValueVision Intern., Inc. v. F.C.C., C.A.D.C.1998, 149 F.3d 1204, 331 U.S.App.D.C. 331. Telecommunications 1231

For purposes of Cable Act provision requiring cable television suppliers having more than 36 activated channels for provision of "services generally available to residential subscribers" to provide commercial channel access to unaffiliated parties, services must be available throughout service area of cable company, and 36 channel service to approximately 40% of population of area served was insufficient. Sierra East Television, Inc. v. Weststar Cable Television, Inc., E.D.Cal.1991, 776 F.Supp. 1405. Telecommunications 1234

6. Channel capacity

In establishing whether cable television supplier has 36 "activated channels," so as to be required under Cable Act to provide commercial channel access to unaffiliated parties, measurement is made by analysis of number of channels for which engineering and equipment is actually in place at headend of system to carry and deliver services to residential subscribers, not total channel capacity of system. Sierra East Television, Inc. v. Weststar Cable Television, Inc., E.D.Cal.1991, 776 F.Supp. 1405. Telecommunications 1230

Cable operator which had 42 activated channels and had set aside total of four leased access channels was in violation of Cable Communications Policy Act; Act required that 10% of channels be reserved for leased access use, with fractions rounded up. Media Ranch, Inc. v. Manhattan Cable Television, Inc., S.D.N.Y.1991, 757 F.Supp. 310. Telecommunications 1231

7. Injunction

Producers of cable television programs were entitled to preliminary injunction prohibiting cable television operator from scrambling sexually oriented programming unless viewers returned card requesting programming where the constitutionality of Cable Act provisions pertaining to operators' editorial control was pending before Supreme Court in another action, producers' maximum audience would be diminished from 290,000 to 50,000 viewers if operator began scrambling policy, and operator had stipulated not to voluntarily change terms upon which it carried programming without further court order, despite claim that stipulation related only to one specific program. Goldstein v. Manhattan Cable Television, Inc., S.D.N.Y.1995, 916 F.Supp. 262. Telecommunications 1244

8. Persons entitled to maintain action

Cable programmer had standing to bring § 1983 action seeking to enjoin prosecution of cable operators under Puerto Rico's obscenity statute based on claim that statute was partially preempted by Cable Communications Policy Act; threat to cable operator's immunity posed by local prosecution also threatened programmer's statutory right of access to operator's channel capacity, and programmer alleged reluctance on part of operators to defend their rights based on their statutory immunity. Playboy Enterprises, Inc. v. Public Service Com'n of Puerto Rico, C.A.1 (Puerto Rico) 1990, 906 F.2d 25, certiorari denied 111 S.Ct. 388, 498 U.S. 959, 112 L.Ed.2d 399. Civil Rights 1331(6)

Cable television subscribers' association was not "person aggrieved" within meaning of Cable Act statute, which authorizes action by any person aggrieved by failure or refusal of cable operator to make channel capacity available for use, but which permits court to order offending operator to make channel capacity available, if channel capacity sought is wrongfully withheld, and, thus, lacked standing for either express or implied right of action. New York Citizens Committee on Cable TV v. Manhattan Cable TV, Inc., S.D.N.Y.1986, 651 F.Supp. 802. Telecommunications 1243

9. Removal

Section of Cable Communications Policy Act of 1984 regulating manner in which cable television operators make leased access cable channels available to unaffiliated local broadcasters and creating federal cause of action in district courts for unaffiliated programmers who are aggrieved by failure or refusal of cable operators to make commercial leased access channels available did not confer removal jurisdiction, pursuant to complete preemption doctrine, over state-law fraud and breach of contract claims asserted by local television station against cable operator. Blab T.V. of Mobile, Inc. v. Comcast Cable Communications, Inc., C.A.11 (Ala.) 1999, 182 F.3d 851. Removal Of Cases 25(1)

47 U.S.C.A. § 532, 47 USCA § 532

Current through P.L. 111-10 (excluding P.L. 111-5 and 111-8) approved 3-20-09

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